

In the Matter of License No. 90976

Issued to: FRANK V. FOOT

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

626

FRANK V. FOOT

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 9 October, 1952, an Examiner of the United States Coast Guard at San Francisco, California, suspended License No. 90976 issued to Frank V. Foot upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Chief Mate on board the American SS HAWAIIAN PILOT under authority of the document above described, on or about 22 September, 1952, he assaulted Manuel E. Pacheco who was the Boatswain on the ship.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of Boatswain Pacheco and three other members of the Deck Department as well as copies of three entries in the ship's deck log book. It was also stipulated that three other witnesses would have given similar testimony.

In defense, Appellant offered in evidence his own sworn testimony and the stipulated testimony of the Master and Chief Engineer. Appellant stated that he had struck the Boatswain one blow in order to maintain authority after the Boatswain had verbally abused Appellant and defied his order in the presence of the entire deck force.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's License No. 90976, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of two months on twelve months probation.

From that order, this appeal has been taken, and it is urged that Appellant's conduct was justified in order to maintain discipline after the Boatswain deliberately refused to obey Appellant's lawful order and led other members of the crew to refuse to obey such order; that an officer is entitled to use force to insure obedience under certain extreme circumstances; and that infliction of a penalty herein will tend to destroy the discipline necessary for the protection of life and property at sea.

APPEARANCES: Messrs. Derby, Sharp, Quinby and Tweedt of San Francisco, by James A. Quinby, Esquire, of Counsel.

FINDINGS OF FACT

On 22 September, 1952, Appellant was serving as Chief Mate on board the American SS HAWAIIAN PILOT and acting under authority of his License No. 90976 while the ship was docked at Honolulu, T. H.

The vessel was scheduled to get underway at 1830 on this date. Shortly after 1800, Appellant was requested to attend an informal meeting of the members of the Deck Department. The purpose of the meeting was to discuss the fact that Appellant personally gave orders to the deck force and told them how to do their work rather than exercising his supervision through Boatswain Pacheco. Earlier that day, the Boatswain had expressed his resentment against Appellant for being on deck so much of the time and watching the seamen rather than leaving this up to the Boatswain to do.

After Appellant arrived at the meeting, there was a heated argument between him and the Boatswain on the above subject. The Boatswain stated in a loud and belligerent voice that he should be given the responsibility of seeing that the deck force performed their duties. Before 1830 and in order to terminate the argument, Appellant gave the order to take in the gangway. Since the Boatswain then stated belligerently that the gangway would not be pulled in until 1830, the seamen stopped their movements to carry out Appellant's order. When the Boatswain continued to direct abusive language towards Appellant, the latter struck the Boatswain with his fist before the members of the deck force separated the two men. The record does not disclose that either man was injured in this encounter.

There is no record of any prior disciplinary action having been taken against Appellant during his fifteen years at sea.

OPINION

Disobedience of orders and verbal abuse does not justify the use of physical force by a subordinate officer to obtain compliance with his orders unless immediate action is required for the safe navigation of the ship. This proposition is supported by Stout v. Weedon (D.C. Wash., 1899), 95 Fed. 1001, since, in that case, the seaman was struck by the Master while the ship was at sea; and it was essential that his order, concerning the sails, be obeyed without delay. The latter case was

in accord with Judge Story's prior decision:

"That subordinate officers have no authority to punish a seaman when the master is on board, unless such punishment is absolutely required at the very moment, by the necessity of the ship's service, to compel the performance of duty, and that the master was generally the sole authority, when on board, to authorize punishment to be inflicted on any of the crew." U.S. v. Taylor, 2 Sumn. 584.

The absence of subsequent judicial opinion to the contrary, the above quotation is still applicable.

In Appellant's case, he was a subordinate officer and there is no evidence that the ship was put in peril by the failure of the Boatswain to carry out the Appellant's order. Appellant had ample time to settle the matter by taking the Boatswain before the Master.

Although Appellant was, undoubtedly, sorely provoked by the Boatswain's recalcitrant conduct, a licensed officer must exert greater control over his temper in order to escape censure under circumstances such as are present in this case. The record indicates that Appellant's conduct was also unjustified because it was motivated more by his anger with the Boatswain because of his abusive language than by an attempt to make the Boatswain obey the order to take in the gangway. But in view of Appellant's unblemished record while going to sea steadily for a period of fifteen years, the order of the Examiner dated at San Francisco, California, on 9 October, 1952, is modified to read as follows:

ORDER

License No. 90976, and all other licenses, certificates of service and documents issued to Appellant by the United States Coast Guard or its predecessor authority, are suspended for a period of one (1) month. This suspension shall not be effective provided no further charges are proved against Appellant under R.S. 4450, as amended, for acts committed within six (6) months from 9 October, 1952.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 4th day of February, 1953.